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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,481	09/28/2001	Shuichi Takahashi	1163-0354P	2776
2292	7590	02/03/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH			SMITH, RUTH S	
PO BOX 747				
FALLS CHURCH, VA 22040-0747			ART UNIT	PAPER NUMBER
			3737	

DATE MAILED: 02/03/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/964,481	TAKAHASHI ET AL.
Examiner	Art Unit	
Ruth S Smith	3737	

-- The MAILING DATE of this communication appars on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 23 September 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1 and 3-12 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1 and 3-12 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. ____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). ____ .
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ . 6) Other: ____ .

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 23, 2003 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,3-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakajima (JP 01242074A). Nakajima et al disclose (abstract, Figures 1-4) a non-invasive method and apparatus for adjusting irradiation conditions by controlling patient position during radiotherapy treatment comprising imaging in three dimensions a diseased part in a patient to be subjected to radiation therapy, an imaging means comprising a plurality of devices, generating of the target in uncorrected and distortion-corrected forms, relating position of the target positioning means, the target imaging means, and the irradiation means in three dimensions, correcting patient position to compensate for patient movement as it occurs by using a computer controlled system (which inherently includes an algorithm), for continuously monitoring the positions of the target in three dimensions, and then altering the position of the target to maintain

alignment of the patient with a predetermined three-dimensional coordinate system. It should be noted that a full translation of Nakajima has not been provided, however, a detailed description of the system and method of Nakajima is recited in column 1-2 of Kunieda et al(6,307,914). It should be further noted that the imaging means/device is fixed by means of frame rail 6,7 with respect to the room in which it is positioned. Furthermore, all positions detected are inherently in a 3D coordinate system.

Claims 1,3-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Nishihara ('403). Nishihara discloses (abstract, figures 4,7,8, columns 6,9,12) a method and apparatus for controlling radiation therapy conditions during treatment comprising positioning a marker invasively or non-invasively adjacent to a target of interest on a patient to be subjected to radiation therapy, and imaging the marker and target using a plurality of imaging devices, relating the position of the marker and target positioning means, the marker and target imaging means, and the irradiation. The positions would inherently be in a 3 D coordinate system. The method further includes irradiating the target according to prescribed conditions, continuously correcting the irradiating conditions to compensate for patient movement as it occurs by using a computer-controlled system (which inherently includes the use of an algorithm) for continuously monitoring the position of the marker and target in 3 dimensions, comparing images taken during treatment for therapy planning and then altering the irradiating conditions to maintain the prescribed therapy. It should be further noted that the imaging means/device is fixed with respect to the room in which it is positioned.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Response to Arguments

Applicant's arguments filed September 23, 2003 have been fully considered but they are not persuasive. Applicants arguments regarding Nakajima are noted, however, the imaging means/device is fixed by means of frame rail 6,7 with respect to the room in which it is positioned. Applicant's arguments regarding Nishihara are noted, however, all positions detected are inherently in a 3D coordinate system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth S Smith whose telephone number is (703) 308-3063. The examiner can normally be reached on M-F 5:30 AM- 2:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on (703) 308-2262. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Ruth S Smith
Primary Examiner
Art Unit 3737

RSS